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BUI, VY Q	

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 19

Application Number: 09/665,668
Filing Date: September 20, 2000
Appellant(s): GRAY ET AL.

Paul A. Coletti
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/26/2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is substantially correct. Claim 22 as amended in the "Appeal Brief" has not been entered. The claim as amended in the "Appeal Brief" does not place the application in a condition for allowance and does not simplify the issues for appeal. Claim 22, which is under appeal is attached to the "Examiner Answer".

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 21 and 22 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

A substantially correct copy of appealed claims 21 and 22 appears on page 8 of the Appendix to the appellant's brief. Notice that claim 22 as amended in the "Appeal Brief" has not been entered. The claim as amended in the "Appeal Brief" does not place the application in a condition for allowance and does not simplify the issues for appeal.

(9) Prior Art of Record

5,354,308	SIMON et al.	10/11/1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by SIMON et al.-5,354,308.

To clearly show that the SIMON –'308 stent reads on claims 21 and 22, the claims have been copied word by word and applicable labels in SIMON-'308 stent shown in an attached Fig. 4 are used in the below rejection:

As to claim 21, SIMON (Figs. 4, 5, 9A, 9B, 9C, 9E) discloses stent **2/14** (especially stent **2/14** as shown in attached Fig. 4) having first and second ends (**E1 and E2**) with an intermediate section (**I**) therebetween, the stent (**2/14**) further having a longitudinal axis, and both an unexpanded (shown in Figs. 5, 9A, 9C) and expanded configuration (shown in Figs. 4, 9B, 9E) comprising:

(a) a plurality of longitudinally disposed struts (see struts **S1**, **S2** shown in attached Fig. 4), wherein each strut (**S1** or **S2**) defines a wave along the longitudinal axis; the spatial frequency (**F-high**) of the wave associated with each of the struts (**S1** or **S2**) being different in a first end region (**ER1** or **ER2**, attached Fig. 4) lying proximate to one of said ends (**E1 or E2**) in comparison to the spatial frequency (**F-low**) of the wave in the intermediate section (**I**); and

(b) a plurality of links (**6** and **16**; attached Fig. 4) for maintaining the struts (**S1** and **S2**) in a tubular structure; wherein said frequency is greater (**F-high > F-low**, see attached Fig. 4)in said first end region (**ER1 or ER2**).

As to claim 22, SIMON (Figs. 4, 5, 9A, 9B, 9C, 9E) discloses stent **2/14** having first and second ends (**E1** and **E2**; attached Fig. 4) with an intermediate section (**I**) therebetween and a longitudinal axis, and both an unexpanded (shown in Figs. 5, 9A, 9C, for example) and expanded configuration (shown in Figs. 4, 9B, 9E, for example) comprising:

said unexpanded configuration (shown in Figs. 5, 9A, 9C)comprising a plurality of longitudinally disposed wave-shaped struts (**S1** and **S2**); and

a plurality of circumferential links (**6** and **6'**, attached Fig. 4) for maintaining the struts (**S1** and **S2**) in a tubular structure at a plurality of locations along said strut, wherein said strut (**S1**) is connected to an adjacent strut (**S2**) by a separate link (**6**), each link being axially displaced from any other circumferentially adjacent link (**6'**, see attached Fig. 4).

(11) Response to Argument

1. Argument 1 (page 4, "Appeal Brief", paper No. 18): Is claim 21 patentable over 35 USC § 102(b) with respect to the Simon reference?

Argument A: According to the Examiner, Simon U.S. Patent No. 5,354,308 describes a stent 14 which has a wire for defining a series of longitudinally disposed struts, where each strut defines a "wave" along the longitudinal axis. This cannot be farther from the case. As seen in Figure 5, the stent in its unexpanded shape is simply a series of *straight* segments, very similar to those in early prior art, such as Palmaz, U.S. Patent No. 4,733,665. The contrast, as can be clearly seen from Figure 2 of the current invention, the struts of the present invention are actually *cut* in wave-shaped form. This is starkly different than that which existed in the prior art. It is similarly in contrast to that which exists in Simon. Accordingly, for this reason alone, the claims cannot be found to be anticipated by Simon.

Of course, each of the waves in the present application are described as having a greater frequency at their end regions. Naturally since Simon does not disclose a wave, he cannot *possibly* disclose a "frequency" of such "waves.

Response to argument A: It is well known that a wave having an associated frequency can be a trapezoid-shaped wave (see NOMURA et al.-5,844,193: Fig. 4; col. 10, lines 61-65). Therefore, the rejection of the claims based on trapezoid wave-shaped stent of SIMON et al.-'308 is proper.

Argument B: Also, it is to be noted that Simon does not render the present application obvious. In fact, Simon teaches away from having a wave-shaped structure as described. These wave-shaped struts are configured so as to create additional flexibility of the stent. Naturally, Simon is deficient in this regard as well. Accordingly, at least claim 21 is patentable over the Simon reference.

Response to argument B: The above rejection is a 102(b) rejection over SIMON-'308.

2. Argument 2 (page 5, "Appeal Brief", paper No. 18): Is claim 22 patentable over Simon using 35 USC § 102 (b)?

In claim 22, there is the additional limitation made to which require that the links which separate the plurality of circumferentially disposed struts, are axially displaced from each other. Simon makes no such reference. While the Examiner describes the same links 6 of Simon in both claims 21 and 22, he fails to identify *any* links which maintain a displacement of the wave-shaped struts. In fact, it is seen that the alleged by "wave-shaped struts" actually intersect each other. Accordingly, there is simply no way that the Examiner can find the "link" element in Simon. So, for this reason alone it is respectfully submitted that Simon does not anticipate claim 22. In addition, for the reasons mentioned above, claim 22 is not rendered obvious by Simon.

Response to the above argument: links (6 and 6', attached Fig. 4) represent connection or linking between two adjacent struts such as strut S1 and S2 together by welding (SIMON-'308: col. 3, lines 6-8). Links (6/6') are disposed in a similar manner as of the present invention as indicated in the above rejection.

Remarks: the following remarks are for are for additional information:

1. The "Terminal Disclaimer", the "Declaration of Power of Attorney" for application 08/770,236 and the "Associate Power of Attorney" for application 08/770,236 filed with the "Appeal Brief" (paper No. 18) can not be considered as proper substitutes for the "Declaration of Power of Attorney" for this application 09/665,668 and the "Associate Power of Attorney" for application 09/665,668.

2. Claim 22 as amended in the "Appeal Brief" is not patentable over SIMON-'308 and should be rejected under a 102(b) rejection over SIMON-'308 as below:

As to claim 22, SIMON (Figs. 4, 5, 9A, 9B, 9C, 9E) discloses stent **2/14** having first and second ends (**E1** and **E2**; attached Fig. 4) with an intermediate section (**I**) therebetween and a longitudinal axis, and both an unexpanded (shown in Figs. 5, 9A, 9C, for example) and expanded configuration (shown in Figs. 4, 9B, 9E, for example), said stent comprising:

said unexpanded configuration (shown in Figs. 5, 9A, 9C) comprising a plurality of longitudinally disposed wave-shaped struts (**S1** and **S2**) placed adjacent to one another around the

stent; and

a plurality of circumferential links (**6** and **6'**, attached Fig. 4) for maintaining the longitudinal disposed wave-shaped struts (**S1** and **S2**) in a tubular structure at a plurality of locations along said strut, wherein at least one of said longitudinally disposed wave-shaped struts (**S1**) is connected to an adjacent strut (**S2**) of said longitudinally disposed wave-shaped struts (**S1** and **S2**) by a separate link (**6**), each of said links being axially displaced from any other circumferentially adjacent link (**6'**, see attached Fig. 4).

Attachment:

1. Fig. 4, SIMON-'308.
2. Claims 21 and 22 for appeal.
3. U.S. Pat. 5,844,193.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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March 3, 2004

Conferees

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Attached Fig. 4 (SIMON-'308)

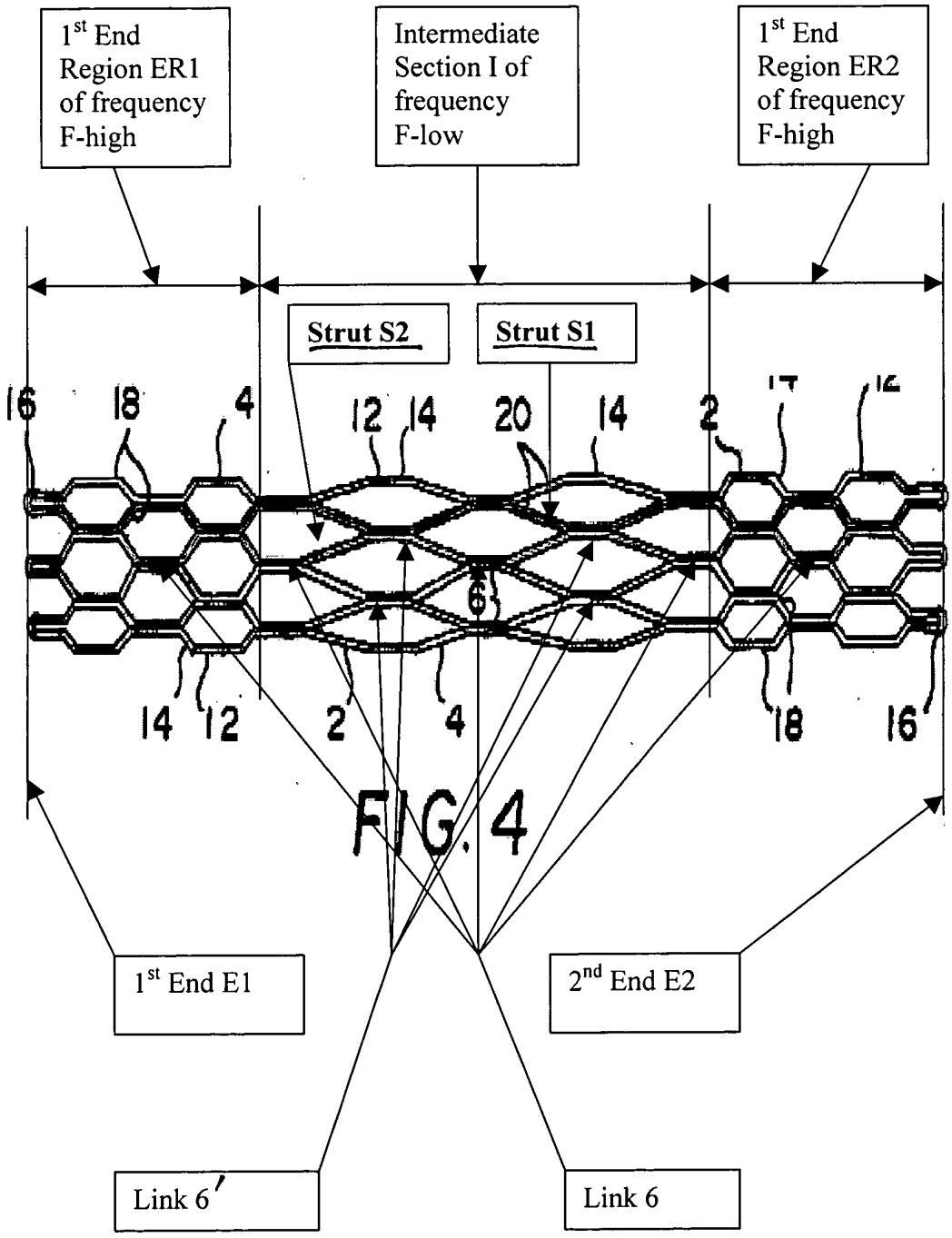

FIG. 4